Supreme Court, U.S.
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(1)

No.

IN THE

Supreme Court of the United States

JAMAL YANAKI; SUSAN I. MOSS, PETITIONERS

v.

PARR, WADDOUPS, BROWN, GEE & LOVELESS, A UTAH PROFESSIONAL CORPORATION; CLARK WADDOUPS; JONATHAN O. HAFEN; JUSTIN P. MATKIN;

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

At 8:00 a.m., an armed, uniformed, on-duty Salt Lake County Sheriff's Deputy threatened to kick in the door of a private home if its occupant did not allow him to conduct a search thereof. The deputy was accompanied by a lawyer and two other representatives of a private litigant, who had brought a civil action against the other, absent, occupant of the home and obtained an *ex parte* search order. The deputy did not hold a valid search warrant, yet proceeded to conduct a search and to seize property. The questions presented are:

1. Is there a heightened pleading requirement for civil rights claims where the constitutional deprivation by the police was caused by private parties obtaining a search order in civil litigation?

2. When the police conduct an unconstitutional search and seizure at a private home, does that police action constitute sufficient "state action" to support a claim under 42 U.S.C. § 1983 against the private parties who caused the constitutional deprivation by the police?

PARTIES TO THE PROCEEDING

The parties to the case below were: Jamal S. Yanaki and Susan I. Moss, plaintiffs, and Iomed, Inc., a publicly- held Utah corporation, Robert J. Lollini, Mary Crowther, Laura Millar, Parr, Waddoups, Brown, Gee & Loveless, a Utah professional corporation, Clark Waddoups, Jonathan O. Hafen, Justin P. Matkin, Office Equipment Associates, a closely-held Utah corporation dba OfficeWare and Scott L. Johnson, defendants. Of the defendants, only Parr, Waddoups, Brown, Gee & Loveless, a Utah professional corporation, Clark Waddoups, Jonathan O. Hafen and Justin P. Matkin are respondents to this petition.

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Petitioners respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case.

OPINIONS BELOW

The Order of the United States Court of Appeals for the Tenth Circuit denying rehearing and rehearing *en banc*, entered on October 28, 2005, is unpublished (App. 41a-42a). The opinion of the United States Court of Appeals for the Tenth Circuit is published at 415 F.3d 1204 (10th Cir. 2005) (App. 1a-25a). The decision of the district court is published at 319 F. Supp. 2d 1261 (D. Utah 2004) (App. 25a-40a).

JURISDICTION

The opinion of the United States Court of Appeals for the Tenth Circuit, from which review is sought, was entered on July 26, 2005. The Order of the United States Court of Appeals for the Tenth Circuit denying rehearing and rehearing *en banc* was entered on October 28, 2005. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

NOTIFICATION TO UTAH ATTORNEY GENERAL

In the event that the constitutionality of a statute of the state of Utah is drawn into question by these proceedings, petitioners are providing notice to the Utah Attorney General of this petition. No court has previously so certified to the Utah Attorney General.

RELEVANT PROVISIONS INVOLVED

U.S. CONST., AMEND. IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST., AMEND. XIV cl.1

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law . . ..

The federal statute involved is 42 U.S.C. § 1983, which provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom or usage, of any state ... subjects or causes to be subjected, any citizen . . . to the deprivation of any rights ... secured by the Constitution and laws, shall be liable to the person injured in an action at law, suit in equity, or other proper proceeding for redress.

FED. R. CIV. P. 8(a)

> A pleading which sets forth a claim for relief, whether an original claim, counterclaim,

> cross-claim, or third-party claim, shall contain . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief . . . .

FED. R. CIV. P. 12(b)(6)

> [T]he following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted . . . .

STATEMENT

1. Summary of Facts. At 8:00 a.m. on Monday morning, April 15, 2002, petitioner Susan Moss' ("Moss") doorbell rang. App. 47a, Complaint ¶ 20. Moss was awakened by the doorbell and, still in her pajamas, looked through the small window in her front door and saw a Salt Lake County Sheriff's Deputy (Officer Kopp), with another man (Respondent Matkin). App. 47a, Complaint ¶ 20. Only because of Officer Kopp's presence did Moss even answer the door. App. 47a, Complaint ¶ 20.

Officer Kopp served Moss with a state court order that directed the Salt Lake County Sheriff to conduct a search of the home and to seize property. App. 27a, Complaint ¶ 20. After reading portions of the order allowing the search, and seeing that it involved petitioner Jamal Yanaki ("Yanaki"), Moss advised Matkin and Officer Kopp that Yanaki was not home and she would not allow them in her home without him being present. App. 47a, Complaint ¶ 21.

Matkin said "we can come in now, or we can come in later." App. 47a, Complaint ¶ 22. Officer Kopp, to support Matkin's statement and to intimidate Moss, said

"We can kick in this door." App. 47a, Complaint ¶ 22. Such statement by Officer Kopp was false, as a matter of law, because he held no valid search warrant. *See generally* App. 43a-49a, Complaint ¶¶ 7-30. While Matkin left purportedly to get an order ostensibly to allow Officer Kopp to kick in the door, Officer Kopp remained and surveilled the home, intimidating Moss. App. 47a, Complaint ¶ 23.

Matkin returned to Moss' home with a second order, this time expressly directing the Salt Lake County Sheriff's Office to enter Moss' home "and use reasonable force, if necessary and appropriate under the circumstances, to execute the Order, including entering through unlocked doors, conducting a search of the premises and detaining any person who resists enforcement of the Order." App. 49a, Complaint ¶ 31. When Matkin returned to Moss' home with the second order, not only Officer Kopp, but other representatives of the civil plaintiff came to Moss' door, with Matkin, in a deliberate show of force, while Officer Kopp served the writ of assistance on Moss. App. 49a, Complaint ¶ 31. Neither the original order or the second order, or any Utah law upon which they purported to be grounded, allowed any pre- or post-deprivation hearing. *See* App. 46a, Complaint ¶ 15; App. 49a, Complaint ¶ 30; App. 53a-54a, Complaint ¶ ¶ 153-55; App. 56a, Complaint ¶ 171; and App. 56a-57a, Complaint ¶ 181.

Only under Officer Kopp's threat of kicking in the door to her home and the new threat of being "detained" if she did not cooperate, did Moss allow Matkin, Officer Kopp, and others to enter her home and for Officer Kopp to commence the search and seizure. App. 49a, Complaint ¶ 31. Apparently not satisfied with Moss' original refusal

to allow him into the home, Officer Kopp summoned a second police officer, Sergeant Herlin, who arrived to reinforce the threat to "detain" Moss if she did not cooperate. App. 50a, Complaint ¶ 33.

The allegations show substantial state action by both Officer Kopp and Sergeant Herlin to carry out this unconstitutional invasion of petitioners' home. "On April 15, 2002, Matkin, Crowther and Johnson conducted an illegal search of Moss' Home, jointly, under color of state law, with the Salt Lake County Sheriff's Office, and the search was a state action conducted pursuant to orders from a state court judge." App. 56a, Complaint ¶ 167. The same allegation is made as to the seizure of property. App. 56a, Complaint ¶ 168. Moss was not a party to the state court action at any time. *See* App. 43a, Complaint ¶ 7. Indeed, Moss pointed out to Officer Kopp that the papers which he relied on to force a search of her home were not directed to her. App. 47a, Complaint ¶ 21. Nevertheless, Officer Kopp used the badge of his official authority as a police officer to threaten to kic. in Moss' door, to threaten to detain her and to conduct an unconstitutional search of her home and to seize property therein. App. 47a-51a, Complaint ¶¶ 20-39; App. 53a, Complaint ¶¶ 138, 143-44; and App. 56a, Complaint ¶¶ 167-170.

Petitioners requested relief under 42 U.S.C. §§ 1983, 1988, and jurisdiction of the district court was invoked pursuant to 28 U.S.C. §1331 over that federal question. Supplemental jurisdiction was invoked over state law claims, pursuant to 28 U.S.C. § 1367(a).

2. District Court Decision. The district court agreed that the search and seizure, as pleaded, were